UNITED PARK CITY MINES CO.

IBLA 77-529 Decided January 18, 1978

Appeal from decision of the Utah State Office, Bureau of Land Management, returning public sale application U-2455.

Affirmed as modified.

1. Appeals -- Federal Land Policy and Management Act of 1976: Sales -- Public Sales: Applications -- Rules of Practice: Appeals: Standing to Appeal

   A decision to return an application for a public sale constitutes an action adverse to the applicant by an officer of the Bureau of Land Management and is thus appealable to the Board of Land Appeals under 43 CFR 4.410.

2. Administrative Authority: Generally -- Applications and Entries: Generally -- Federal Land Policy and Management Act of 1976: Sales -- Public Sales: Generally

   It is a proper exercise of discretion under the Federal Land Policy and Management Act of 1976 for the Bureau of Land Management to refuse to process and to reject applications for public sale pending on the date of the Act, even though it will continue to process bids and preference right applications for a sale held prior to the Act.

APPEARANCES: M. Scott Woodland, Esq., VanCott, Bagley, Cornwall & McCarthy, Salt Lake City, Utah, for Appellant.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

United Park City Mines Company has appealed from the July 14, 1977, decision of the Utah State Office, Bureau of Land Management (BLM), returning Appellant's application for public sale U-2455. The application had been filed pursuant to the Isolated Tract Sale Act, 43 U.S.C. § 1171 (1970), repealed, § 703(a), Federal Land Policy and Management Act of 1976 (FLPMA), 90 Stat. 2789.

The reason given by the State Office for the return of Appellant's application was that FLPMA makes no provision for continued processing of applications filed under the repealed statute. The decision also stated that Appellant could not appeal the decision.

[1] The decision to return Appellant's application constituted an action adverse to Appellant by an officer of the BLM and is thus appealable to the Board of Land Appeals under 43 CFR 4.410. BLM's statement to the contrary is clearly incorrect. Furthermore, denial of the appeal to this Board would contravene the policy set forth in section 102(a)(5) of FLPMA, 43 U.S.C.A. § 1701(a)(5) (West Supp. 1977), to provide "an objective administrative review of initial decisions" of BLM.

[2] While we agree with Appellant that the State Office's action was appealable to this Board, we do not agree with Appellant's request that its application be processed under FLPMA, but for a reason different from that expressed in the State Office decision.

Appellant points to the new provision in FLPMA authorizing the sale of public land, section 203, 43 U.S.C.A. § 1713 (West Supp. 1977), and also to section 310, 43 U.S.C.A. § 1740 (West Supp. 1977), providing that prior to the promulgation of rules and regulations under the Act "such lands shall be administered under existing rules and regulations concerning such lands to the extent practical." Appellant notes that regulations have not yet been promulgated for sales of public land pursuant to section 203, nor for exchanges of public lands pursuant to section 206 of FLPMA, 43 U.S.C.A. § 1716 (West Supp. 1977), but that a directive issued by the Director, BLM, Organic Act Directive (OAD) 77-17, issued February 10, 1977, states that pending exchange applications filed under section 8 of the Taylor Grazing Act, 43 U.S.C. § 315(g), repealed by section 705(a) of FLPMA, 90 Stat. 2792, would continue to be processed under section 206 of FLPMA as long as the additional requirements of that section were met. Appellant contends that public sale applications and private exchange applications are analogous and they should be processed similarly. In short, Appellant contends it is arbitrary for BLM not to continue processing its application.

There are considerable differences in land use planning and consequences between exchanges of land and the sale of public land. The most obvious one, of course, is that private land may be desired by the Federal Government for its own management needs in the public interest. There is a twofold public interest involved, the proposed acquisition and the proposed disposition. With a public sale, however, the concern is only with the effect of the disposition of the land. There is ample reason for this Department to differentiate then between pending applications for exchange and pending applications for public sale.

The action by BLM in this case was taken apparently pursuant to another BLM directive, OAD 77-16, February 9, 1977, in which the State Offices were instructed to return public sale applications to the applicant where no sale had been held prior to October 21, 1976, the date FLPMA was enacted, but to continue to process public sales under sections 203 and 310 of FLPMA where the sales had been held prior to the enactment date. In L. A. Gillette, 33 IBLA 182 (1977), this Board upheld action taken consistent with this directive concerning a high bidder and preference right applicants. The sale had been held prior to the Act and the Board concluded that action could continue under sections 203 and 310 of FLPMA and existing regulations even though no valid existing rights had arisen as a result of the sale. 1/

We see nothing arbitrary in BLM's differentiation between public sale applications and private exchange applications. Likewise, we see no reason to disturb BLM's distinction in applying existing public sale regulations to finalize a public sale held prior to FLPMA, but in refusing to process applications where a public sale had not been held at that time. A public sale is not held until the appropriate environmental evaluations, land use planning and classification determinations have been met. Most of the actions thereafter by the manager would be ministerial in nature. This is not so where an application is still pending for classification and the judgmental managerial decisions concerning the land remain to be made. It is practical to apply existing regulations to complete the sale where it has been held, but the implied determination by BLM that it is not practical to do so where the sale has not been held appears sound. Therefore, we believe it is a proper exercise of discretion under FLPMA for BLM to reject pending public sale applications where a sale has not been held prior to the Act. Appellant's application is rejected for this reason.

1/ It is well established that no rights are obtained by the mere filing of a public sale application or even by a determination that a bidder is the purchaser at a public sale. E.g., Ferry v. Udall, 336 F.2d 706 (9th Cir. 1964), cert. denied, 381 U.S. 904 (1965); Willcoxson v. United States, 313 F.2d 884 (D.C. Cir.), cert. denied, 373 U.S. 932 (1963).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed as modified by this decision.

Joan B. Thompson
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Martin Ritvo
Administrative Judge